

NTSB Order No. EA-4974

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of May, 2002

Respondent .

Docket SE-16330

Respondent appeals from the oral initial decision of Administrative Law Judge William R. Mullins, issued on September 25, 2001, following an evidentiary hearing.¹ By that decision, the law judge affirmed the Administrator's finding that respondent violated section 91.13(a) of the Federal Aviation Regulations ("FARs"), and upheld the 30-day suspension sought by the Administrator of respondent's airline transport pilot ("ATP")

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certificate.² We deny the appeal.

Prior to the hearing, respondent admitted to the majority of the factual allegations in the Administrator's complaint.³ Specifically, respondent admitted that on May 18, 2000, he was pilot-in-command of a Cessna Citation Model 560, registration number N5200, executing a landing on runway 15 left at Timmerman Field, Milwaukee, Wisconsin. Respondent also admitted that during the approximate time of the accident, the wind conditions were reported as 40 degrees at 13 knots, and that the aircraft touched down approximately mid-field on the 4,100-foot runway before departing off the end of the runway.⁴

² FAR section 91.13, 14 C.F.R. Part 91, provides, in relevant part, as follows:

Sec. 91.13 Careless or reckless operation.

(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

* * * * *

³ Respondent only contested the Administrator's allegations that the runway was wet at the time of his landing, that "based on the conditions at Timmerman Field at the time of this incident, [respondent] did not allow enough runway to safely land," and that respondent's operation was careless and endangered the lives and property of others.

⁴ The aircraft came to rest in the mud, several hundred feet from the departure end of the runway, it's longitudinal axis oriented about 90 degrees from runway heading. The nose gear sheered off during the incident. Subsequent examination of the aircraft also revealed a significant wear spot on one of the main landing gear tires, but the investigating FAA Inspector did not deem this fact to be exonerating for respondent because the aircraft's anti-skid system was tested and confirmed to be fully functional during

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During the hearing, respondent presented evidence and argument that the aircraft only required approximately 2,000 feet of runway to stop, that even from where he actually touched down there was ample remaining runway to stop the aircraft. Respondent also testified that during the approach, he made visual contact with the runway at approximately the minimum descent altitude on the localizer approach. He characterized the weather as "misting; it was a crummy day; it was a windy day." Transcript ("Tr.") at 129-131. Respondent claimed that his approach was flown at the target speed referenced in his landing distance charts, i.e., a Vref speed of 102 knots, and the reliable evidence does not contradict this claim. Respondent also testified that there wasn't anything about his altitude or position as he crossed the runway threshold that caused him concern about being able to bring the aircraft to a halt on the runway, but he admitted that he may have crossed the runway threshold higher than the 50-foot above-ground-level ideal referenced in the landing chart calculations. The tower controller testified that the aircraft's height above the ground as it crossed the runway threshold was a little higher than normal, and she reiterated under questioning that "it got my attention ... I was definitely watching him at that point." Tr. at 22.

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post-incident examinations of the aircraft. Aside from a failed anti-skid system, no other explanation for the wear discovered on the tire was explored during the hearing.

At the conclusion of the hearing, the law judge upheld the FAR section 91.13(a) violation and the 30-day suspension. In reaching that conclusion, the law judge credited the tower controller's testimony that the aircraft was high as it crossed the runway threshold. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1986) (the Board defers to credibility assessments of its law judges unless clearly erroneous).

On appeal, respondent argues that the law judge misconstrued the controller's testimony, that some of the controller's testimony was inherently incredible, that the radar data was not reliable to prove the Administrator's charges, and that the law judge improperly disregarded evidence of a braking system malfunction.⁵ The Administrator urges us to uphold the law judge's decision. We have reviewed the record, and considered respondent's arguments, and we discern no basis to disturb the law judge's credibility-based assessment of the hearing evidence.⁶ Specifically, we see nothing that causes us to question whether the overrun incident was caused by anything other than respondent's actions when he continued the landing under circumstances that included a quartering tailwind, an

⁵ Respondent's argument about the radar data is, essentially, moot, for we have not considered this evidence in reaching our determination, nor, apparently, did the law judge assign much, if any, weight to it.

⁶ Respondent has not convincingly demonstrated that the tower controller's testimony was inherently incredible. We therefore defer to the law judge's favorable assessment of the veracity of the controller's testimony that respondent's approach caused her such concern that she actually sought to notify the emergency
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aircraft in a position somewhat higher above the runway threshold than intended, a relatively short runway, and the prospect of landing beyond the intended touchdown point.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision upholding the Administrator's Order of Suspension is affirmed; and
3. The 30-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion order.⁷

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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responders before respondent's aircraft had departed the runway.

⁷ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).